

EXHIBIT 5A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SEWARD,)
Individually and on Behalf)
of All Others Similarly) 08 CIV 3976 (KMK)
Situated,)
) ECF CASE
Plaintiff,)
)
vs.)
)
INTERNATIONAL BUSINESS)
MACHINES CORPORATION,)
D/B/A IBM CORP.,)
)
Defendant.) Volume I of II
) Pages 1-65

Videotaped deposition of CATHY BARDAY

taken on behalf of the Defendant, pursuant to
the stipulations contained herein, in
accordance with the Federal Rules of Civil
Procedure, before Daniel M. Gershwin, Certified
Court Reporter, at 1420 Peachtree Street, NE,
Atlanta, Georgia, on the 23rd day of October,
2008, commencing at the hour of 4:32 p.m.

HUNDT REPORTING, LLC
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INDEX TO EXAMINATIONS			Page	Page 2	Page 4
Examination by Mr. Rossman			4	1	THE VIDEOGRAPHER: On video.
INDEX TO EXHIBITS			5	2	CATHY BARDAY,
Defendant's Exhibit Number	Description	Marked/First Identified	6	3	having been first duly sworn, was examined and
D1	Declaration of Cathy S. Barday	26	7	4	testified as follows:
			8	5	EXAMINATION
			9	6	BY MR. ROSSMAN:
			10	7	Q Ma'am, would you please state and spell
			11	8	your full name for the record.
			12	9	A Yes. Cathy S. Barday, C-A-T-H-Y, S as in
			13	10	Sierra, B-A-R-D-A-Y.
			14	11	Q Ma'am, my name is Mike Rossman, and I'm
			15	12	an attorney for IBM in the lawsuit that was filed by
			16	13	Charles Seward, and we're here today to take your --
			17	14	your deposition.
			18	15	A May I ask a question? Your last name is
			19	16	spelled R-O-S-S-M-A-N?
			20	17	Q Yes, it is.
			21	18	A Thank you.
			22	19	Q Now, do you understand you just took an
			23	20	oath, and that would have the same effect as an oath
			24	21	that you would take in a court of law?
			25	22	A Yes, I do.
			26	23	Q And there's a couple ground rules I'd
			27	24	like to go over.
			28	25	Have you actually -- have ever had your
APPEARANCES OF COUNSEL:			29	Page 3	Page 5
On behalf of the Plaintiff:			30	1 deposition taken before?	
JAMES B. ZOURAS			31	2 A Yes, I have.	
Attorney at Law			32	3 Q Well, you may have heard these before,	
Stephan Zouras, LLP			33	4 but just a couple quick rules.	
205 North Michigan Avenue			34	5 If you don't understand a question that I	
Suite 2560			35	6 ask, I'd appreciate if you would -- would let me know,	
Chicago, Illinois 60601			36	7 and I'll -- I'll try to rephrase it.	
Tel: (312) 233-1550			37	8 A (Nods head affirmatively.)	
Fax: (312) 233-1560			38	9 Q If you don't understand my question, I'm	
E-mail: Jzouras@stephanzouras.com			39	10 going to assume that -- that you understand, you know,	
On behalf of the Defendant:			40	11 what it is that I have asked.	
E. MICHAEL ROSSMAN			41	12 And the second rule is you need to give	
Attorney at Law			42	13 audible responses, so yes or no. You can't nod your	
Jones Day			43	14 head, for example, or say uh-huh (affirmative) or	
325 John H. McConnell Boulevard			44	15 unh-unh (negative).	
Suite 600			45	16 A All right.	
Columbus, Ohio 43215-2673			46	17 Q And that's because the -- the deposition	
Tel: (614) 469-3999			47	18 is being recorded. Now, we're using a video as well,	
Fax: (614) 461-4198			48	19 but it's being recorded by a stenographer who's going	
E-mail: Emrossman@jonesday.com			49	20 to prepare a transcript. So it's just easier if you,	
MATTHEW W. RAY			50	21 you know, say yes or no to the questions to get that	
Attorney at Law			51	22 down as opposed to some other type of response.	
Jones Day			52	23 I'd ask also that we don't speak over	
2727 North Harwood Street			53	24 each other, so I won't -- I'll try not to jump in	
Dallas, Texas 75201-1515			54	25 when -- when you're giving an answer to a question,	
Tel: (214) 220-3939					
Fax: (214) 969-5100					
E-mail: Mwray@jonesday.com					

Videographer: Mr. Chris Jordan					
Legal Video Services, Inc.					
3455 Peachtree Road, Suite 500					
Atlanta, Georgia 30326					
Tel: (770) 640-5050					

<p>1 and I'd appreciate if you'd let me finish the question 2 before you start to give your answer for the same 3 reason, just so that the transcript that's prepared at 4 the end of the deposition is clear.</p> <p>5 Now, if you need a break, just let me 6 know. We don't have that much time here tonight, but 7 tonight or tomorrow if you need a break, just let me 8 know. The only thing I'd ask is if there's a question 9 pending on the table that you finish the question 10 before we would actually -- actually take a break.</p> <p>11 Does that sound good?</p> <p>12 A Yes.</p> <p>13 Q All right. Now, ma'am, is there any 14 reason that -- that you can't go forward today with 15 this deposition?</p> <p>16 A No.</p> <p>17 Q For example, have you taken any 18 medication that -- that would impair your ability to 19 understand my -- my questions or to answer them?</p> <p>20 A No.</p> <p>21 Q Now, what is your -- what's your date of 22 birth, please?</p> <p>23 A 4-21-46.</p> <p>24 Q And what's your address?</p> <p>25 A 4780 Highway 20 Northeast, Conyers,</p>	<p>Page 6</p> <p>1 A Bachelor of arts and minored in 2 educational psychology.</p> <p>3 Q Okay. Did you -- did you get any 4 master's degrees after that or any additional college?</p> <p>5 A Yes, I did.</p> <p>6 Q What additional college did you have 7 after that?</p> <p>8 A University of Georgia.</p> <p>9 Q And what'd you get at the University of 10 Georgia?</p> <p>11 A Did not complete the degree, but it was 12 in German and French.</p> <p>13 Q Oh, German and French. Really?</p> <p>14 A Yes.</p> <p>15 Q How -- how long were you at the 16 University of Georgia?</p> <p>17 A Two years, approximately.</p> <p>18 Q Were you -- what -- what -- what degree 19 were you working towards? Was it a master's or 20 another bachelor's?</p> <p>21 A A master's.</p> <p>22 Q Why didn't you complete the program?</p> <p>23 A Job offer.</p> <p>24 Q Who was the job offer with?</p> <p>25 A Jackson High School in Jackson, Georgia.</p>
<p>1 Georgia 30012.</p> <p>2 Q How long have you lived at that address?</p> <p>3 A Approximately ten years.</p> <p>4 Q Now, have you ever been known by any 5 other names?</p> <p>6 A A maiden name.</p> <p>7 Q And what was your maiden name?</p> <p>8 A Schweda.</p> <p>9 Q Schweda.</p> <p>10 Can you spell that for us.</p> <p>11 A Yes. S-C-H-W-E-D-A.</p> <p>12 Q Okay. And how long have you been 13 married? Longer than ten years?</p> <p>14 A Yes.</p> <p>15 Q Can you describe your -- your education 16 for me. Where'd you go to high school, for example?</p> <p>17 A I went to Soddy-Daisy High School.</p> <p>18 Q Okay. And did you attend any school 19 after high school?</p> <p>20 A Yes, I did.</p> <p>21 Q And what was that?</p> <p>22 A Berry College, Mount Berry, Georgia.</p> <p>23 Q Did you get a degree?</p> <p>24 A I did.</p> <p>25 Q What was your degree in?</p>	<p>Page 7</p> <p>1 Q Now, you said that you'd been -- you'd 2 been deposed before.</p> <p>3 A Yes.</p> <p>4 Q Now, what was the -- how many times have 5 you been deposed before?</p> <p>6 A Once.</p> <p>7 Q And what was the case?</p> <p>8 A Federal case, money laundering.</p> <p>9 Q So it was a -- it was a criminal case?</p> <p>10 A It was, (nods head affirmatively).</p> <p>11 Q And what was your -- how did you come to 12 be deposed in that case?</p> <p>13 A Internal auditor.</p> <p>14 Q You were the internal auditor?</p> <p>15 A Yes.</p> <p>16 Q Who was the defendant?</p> <p>17 A A bank in Dalton, Georgia.</p> <p>18 Q And did you -- did you work for the bank 19 or who'd you work for at that time?</p> <p>20 A The bank.</p> <p>21 Q The bank that was the defendant in the 22 case?</p> <p>23 A I did, (nods head affirmatively).</p> <p>24 Q When was the deposition?</p> <p>25 A I don't recall.</p>

	Page 10		Page 12
1 Q	Was it more than ten years ago?	1 Q	And has she been your -- the supervisor
2 A	Yes.	2	the whole time you've been a volume analyst?
3 Q	You weren't a defendant in that case;	3 A	Yes, she has.
4 were you?		4 Q	Where -- where are you -- where do you --
5 A	No.	5	what's your work location? Where do you work?
6 Q	Now, have you ever been the plaintiff in	6 A	You mean address --
7 a lawsuit before this present suit?		7 Q	The address --
8 A	No.	8 A	-- or floor?
9 Q	Have you ever filed any type of	9 Q	-- uh-huh (affirmative).
10 administrative charge against -- against an employer,		10 A	4111 Northside Parkway, Atlanta, Georgia.
11 a charge with the EEOC, for example, or the DOL or the		11 Q	And is that the same address you've
12 National Labor Relations Board?		12	worked at the whole time you've been a volume analyst?
13 A	Repeat that. I don't understand. The	13 A	Yes, it is.
14 National --		14 Q	What was your position before you were a
15 Q	Labor Relations Board?	15	volume analyst?
16 A	No, no.	16 A	Pardon me. Teleservices representative.
17 Q	No administrative charges?	17 Q	What does a -- what did you do as a
18 A	No.	18	teleservices representative?
19 Q	Now, you currently work for IBM; is that	19 A	Answer phone calls.
20 correct?		20 Q	For what purpose?
21 A	I do.	21 A	To satisfy customers.
22 Q	Now, what is your -- what's your present	22 Q	What were the customers calling about?
23 position?		23 A	Enrollment in classes, customer number
24 A	Volume analyst.	24	problems, customer complaints, and sometimes misrouted
25 Q	What does a volume analyst do?	25	calls.
	Page 11		Page 13
1 A	Process cash transactions.	1 Q	And that's the position you held up till
2 Q	Anything else?	2	mid-2007 when you became a volume analyst?
3 A	No.	3 A	No.
4 Q	What does that mean in -- in layman's	4 Q	There was a position in between?
5 terms, process cash transactions? What do you -- what		5 A	No. There was a position initially when
6 do you do on a day-to-day basis?		6	I joined IBM.
7 A	Manufacturer owners submit manual	7 Q	Okay. So what was your -- well, let me
8 invoices for payment. I confirm those and set up the		8	see. You were a -- you were a teleservices
9 line. I also do cash advances for suppliers that		9	representative till mid-2007; is that correct?
10 need -- and dealers who need additional funds for		10 A	(Nods head affirmatively.)
11 financing inventory or what have you, et cetera, or		11 Q	And then you immediately went into the
12 they reschedule because they are unable to pay. And I		12	volume analyst position or was there another position
13 process those, make sure that everything is proper on		13	in between?
14 the documents such as signatures, amounts, approvals.		14 A	There was not.
15 Q	Now, how long have you held this volume	15 Q	Okay. Who -- at the time you left the
16 analyst position?		16	volume -- or I'm sorry. At the time you left the
17 A	Approximately a year and a half.	17	teleservices representative position, who was your
18 Q	A year and a half.	18	supervisor?
19	So when did -- you started in, what,	19 A	Kerry Bethea.
20 about --		20 Q	Is that a man or a woman?
21 A	Mid-2007 roughly.	21 A	Man.
22 Q	Mid-2007.	22 Q	Okay. And how long had Mr. Bethea been
23 A	(Nods head affirmatively.)	23	your supervisor?
24 Q	Who's your current supervisor?	24 A	Since, say, approximately two thousand
25 A	Kimberly Ramirez.	25	and -- approximately 2005, 2006. I'm not sure of the

<p style="text-align: right;">Page 14</p> <p>1 exact year because we had personnel changes in that 2 department.</p> <p>3 Q Okay. Which department were you in?</p> <p>4 A Teach.</p> <p>5 Q Now, Mr. Bethea, he was your first-line 6 supervisor; is that correct?</p> <p>7 A Yes.</p> <p>8 Q Who was your second-line supervisor?</p> <p>9 A Sharon Lofton.</p> <p>10 Q And Ms. Lofton – by second line, I mean 11 Ms. Lofton would have been above Mr. Bethea?</p> <p>12 A Yes. He was first line. She was second 13 line.</p> <p>14 Q Okay. And who – who's your current 15 second-line supervisor?</p> <p>16 A Kendall Clark.</p> <p>17 Q Now, why did you move from the 18 teleservices representative position to the volume 19 analyst position?</p> <p>20 A Because the Teach department was 21 outsourced to the Philippines.</p> <p>22 Q Okay. Did you ever report to Juan Lyn 23 Williams?</p> <p>24 A No.</p> <p>25 Q Who was your supervisor prior to</p>	<p>1 answering inbound calls?</p> <p>2 A Yes.</p> <p>3 Q How were the calls routed to you, the 4 inbound calls?</p> <p>5 A At what point? There were different 6 routing methods, depending on what point in time 7 you're speaking of.</p> <p>8 Q All right. Let's – let's talk about 9 right before you left your position.</p> <p>10 A Before I left, they were on the Avaya 11 telephone system.</p> <p>12 Q How long had Avaya been in place?</p> <p>13 A Roughly for about three years.</p> <p>14 Q Okay. How about prior to Avaya?</p> <p>15 A It was the telephone. You signed onto 16 the telephone. You had a telephone set at your desk. 17 And when you logged onto that with your user ID and 18 password, it would put you in AUX, and then you'd just 19 hit the button and go available, and calls would come 20 in live to that phone.</p> <p>21 Q That's the Avaya system you're 22 describing?</p> <p>23 A No. That was on the telephone.</p> <p>24 The Avaya system was you would log in but 25 you had an icon come up on your computer screen that</p>
<p style="text-align: right;">Page 15</p> <p>1 Mr. Bethea, your first-line supervisor?</p> <p>2 A Van Anzer Grady, called Van Grady.</p> <p>3 Q And when did you start reporting to Van 4 Anzer Grady?</p> <p>5 A Approximately – approximately 2000.</p> <p>6 Q Okay. So from 2000 until 2005, 2006 it 7 was Van Grady; after that it was Kerry Bethea; and 8 then when you moved to the volume analyst position, 9 that's when it became Ms. Ramirez?</p> <p>10 A Kim Ramirez, correct.</p> <p>11 Q Now, in your teleservices representative 12 position, you said you answered calls?</p> <p>13 A Yes.</p> <p>14 Q So you were handling inbound calls?</p> <p>15 A And outbound.</p> <p>16 Q You made outbound.</p> <p>17 When – when would you make an outbound 18 call?</p> <p>19 A There would be sales campaigns, and we 20 would be given a list of customers to do cold calls.</p> <p>21 Q How often would those sales campaigns 22 take place? Was it like an annual thing or just 23 periodically or –</p> <p>24 A Periodically.</p> <p>25 Q Okay. So was it you were primarily then</p>	<p style="text-align: right;">Page 17</p> <p>1 you had to click to get on.</p> <p>2 Q So you – you logged onto the Avaya 3 system through the computer?</p> <p>4 A Yes. You clicked an icon on your 5 desktop, on your computer, to get on, but you logged 6 on the Avaya system that way.</p> <p>7 Q Okay. Well, let me – let's do it this 8 way. So the Avaya system was in place from, like you 9 said, about the 2004 or 2005 time frame?</p> <p>10 A (Nods head affirmatively.)</p> <p>11 Q And was the -- can you describe for me 12 during that time frame, so the 2004, 2005 under Avaya, 13 from the time period it started until the time you 14 left the position, can you just describe for me at the 15 beginning of the day the process you would go through 16 to begin work. What would you need to do?</p> <p>17 A You mean from arriving in the parking 18 lot? Okay.</p> <p>19 Q Uh-huh (affirmative).</p> <p>20 A I would arrive in the parking lot usually 21 about 6:00 a.m., then walk from the parking lot to the 22 building. If it was before 7:00, had to use a badge 23 to access, then had to walk from there past the 24 security desk, do another badge in to get to the 25 elevator, wait for the elevator or take the stairs,</p>

<p style="text-align: right;">Page 18</p> <p>1 get up to the floor, badge in that door, and then get 2 to my desk. 3 Q Did you – when you got to your floor, 4 you said you had to badge in. 5 A Yes. 6 Q Was that true regardless of the time of 7 day? 8 A To enter, yes. 9 Q Okay. All right. So you've entered the 10 floor, and then what happens? 11 A Well, you badge to get in and get to your 12 desk and then unlock your desk, assemble your 13 supplies, and you had to be fast because I also had to 14 work a queue, direct queue, in relation to doing my 15 calls, and that meant that customers who had web 16 fallouts had to be satisfied, and there was – those 17 had to be satisfied during that day. 18 Q I'm sorry. You said customers that had 19 fallouts? 20 A Web fallouts. They would try to enroll 21 on the internet. 22 Q Oh, I see. 23 A And if they had a problem, then that had 24 to be resolved. 25 I would sign on and commence to work. I</p>	<p style="text-align: right;">Page 20</p> <p>1 Q Is that the same address you're at now? 2 A No, I'm not at Riveredge now. 3 Q Okay. What was the address of the 4 Riveredge building? 5 A Riveredge, Atlanta, Georgia, Riveredge 6 Parkway. 7 Q And how long was your commute typically 8 to get to Riveredge? 9 A Depends on the weather and traffic, but 10 are you asking for an average commute? 11 Q Yeah, an average commute. 12 A About two hours. 13 Q But I take it from what you're saying 14 there was a lot of factors that could affect that? 15 A Yes. 16 Q Make it longer or shorter? 17 A Yes. And I'd get up earlier. If the 18 weather was bad, I'd get up earlier. 19 Q And did you have a goal in terms of how 20 early you wanted to arrive, I mean, before the start 21 of your shift? 22 A Did I have a goal? No. 23 Q So you just wanted to – so if your shift 24 was 7:00, you didn't – you didn't have any idea in 25 your mind when you wanted to arrive there?</p>
<p style="text-align: right;">Page 19</p> <p>1 didn't go to the cafeteria. I ate on my way to work 2 in the car. 3 Q Okay. Well, let me – did you have a 4 regular shift, say, between 2005 and 2007? Was 5 there – did you work a fixed shift? 6 A You mean assigned hours? 7 Q Yes. 8 A Yes, I did. 9 Q What were your assigned hours? 10 A Initially 7:00 to 4:30, and then those 11 changed several times. 12 Q Okay. So at the beginning of 2005, say, 13 it was 7:00 to 4:30? 14 A 7:00 to 4:30, (nods head affirmatively). 15 Q What were some of the other assigned 16 hours that you had between 2005 and -- 17 A When? 18 Q -- 2007, the time you left? 19 A 8:00 to 5:00, 9:00 to 6:00, 6:30. I 20 don't recall all of them, but they were varied. And 21 the net effect was I worked later and later. 22 Q Okay. What – what was the – the 23 address that you were working at as a teleservices 24 representative? 25 A Riveredge.</p>	<p style="text-align: right;">Page 21</p> <p>1 A I knew I had to be there in time to sign 2 on, assemble my supplies, get up to the floor, so I 3 needed to be on time. 4 Q Okay. Now, what did you need to sign 5 onto? 6 A At what point in time, what year? 7 Q Between 2005 and 2007. 8 A When the Avaya system was there? 9 Q Yes. 10 A Need to sign onto Avaya. 11 Q Was Avaya the first thing you would sign 12 onto? 13 A Yes. 14 Q And how would you sign onto Avaya? 15 A Via computer. 16 Q Was your computer on when you got to 17 work? 18 A No. 19 Q How long would it take to turn on your 20 computer? 21 A 15, 20 minutes. 22 Q Would it always take 15 or 20 minutes? 23 A No. Many times longer. 24 Q Would it ever take shorter? 25 A No.</p>

<p>1 Q So 15 or 20 minutes was the minimum 2 amount of time that it took you to log onto your 3 computer?</p> <p>4 A Yes.</p> <p>5 Q Were you just turning the computer on or 6 were there other -- or were there applications you had 7 to open up as well?</p> <p>8 A No. Log on the computer and wait for the 9 computer to sign itself on, go through all of its 10 various gyrations, get the screen, and then be able to 11 get to the Avaya icon and click on it to open it up.</p> <p>12 Q And that 15 to 20 minutes, that was true 13 the entire time that you were using the Avaya system?</p> <p>14 A As long as Avaya was available and the 15 computer was available. There were days -- well, 16 there were weeks where the system was down, we could 17 not get on, system problems.</p> <p>18 Q How would you do your job if the system 19 was down?</p> <p>20 A We were told to take calls manually, go 21 back to the old phone system and take calls manually 22 on paper.</p> <p>23 Q We'll come back to that.</p> <p>24 Okay. Assuming Avaya was available, you 25 know, you could get into the computer, were there</p>	Page 22	<p>1 Q And then you would log onto Avaya, and 2 that would take another 15 or 20 minutes?</p> <p>3 A No. The process from logging onto the 4 computer and clicking on the Avaya icon, that process, 5 15 to 20 minutes.</p> <p>6 Q Okay. So how -- you would turn your 7 computer on, and how long before the Avaya screen 8 popped up or the Avaya icon popped up?</p> <p>9 A Five to ten minutes.</p> <p>10 Q Okay. And then it'd be another five 11 minutes or so after you clicked on Avaya till that was 12 actually available?</p> <p>13 A Yes.</p> <p>14 Q Okay. Now, when you were waiting for 15 Avaya, would you also click on -- try to open up these 16 other applications at the same time or would you wait 17 for Avaya?</p> <p>18 A (Shakes head negatively.) Wait for 19 Avaya.</p> <p>20 Q Okay. So you would turn on your 21 computer, get Avaya up, and then you're saying it 22 would take you another ten minutes after that to get 23 internet access?</p> <p>24 A The system would not let you sign onto 25 other applications until Avaya was up.</p>	Page 24
<p>1 other tools you needed to open on the computer to do 2 your job?</p> <p>3 A Yes.</p> <p>4 Q What tools were those?</p> <p>5 A Well, you had to have the internet 6 access. You had to have ePOS. You had to have the -- 7 I believe it was called the CMR to do customer 8 numbers, look up.</p> <p>9 Q Anything else?</p> <p>10 A Probably, but I don't recall.</p> <p>11 Q How long would it take you to open up the 12 internet?</p> <p>13 A If it was available?</p> <p>14 Q Yes.</p> <p>15 A About ten minutes.</p> <p>16 Q And when would you -- when would you open 17 that up?</p> <p>18 A After I opened Avaya.</p> <p>19 Q How long would it take to actually open 20 up Avaya?</p> <p>21 A 15 to 20 minutes.</p> <p>22 Q So I just want to make sure I understand 23 what you're saying. You would get to work, turn on 24 your computer; that would take 15 to 20 minutes?</p> <p>25 A (Nods head affirmatively.)</p>	Page 23	<p>1 Q Okay. So I think ePOS, was that 2 another --</p> <p>3 A (Nods head affirmatively.)</p> <p>4 Q -- application --</p> <p>5 A Application, uh-huh (affirmative).</p> <p>6 Q -- you were talking about?</p> <p>7 What is ePOS?</p> <p>8 A It had to do with customer numbers and 9 customer accounts, and I don't recall more than that 10 of it at this point because I've been away from it.</p> <p>11 Q Okay. When -- when would you open up 12 ePOS?</p> <p>13 A After I did the internet.</p> <p>14 Q Okay.</p> <p>15 A It was Avaya, internet, ePOS, and 16 anything else I'd need.</p> <p>17 Q How long would ePOS take to boot up?</p> <p>18 A Five -- about five minutes.</p> <p>19 Q Another thing you mentioned was CMR?</p> <p>20 A Yeah. CMR, about five minutes, (nods 21 head affirmatively).</p> <p>22 Q And would that be -- would you be booting 23 up ePOS and CMR at the same time or you --</p> <p>24 A No. One, one, one (indicating).</p> <p>25 Q Okay. And then you -- do you -- do you</p>	Page 25

Page 26	Page 28
1 recall if there were any other applications besides –	1 page.
2 A No, I don't.	2 MR. ZOURAS: (Indicating.)
3 Q – ePOS and CMR?	3 THE WITNESS: Right there? Okay. Thank
4 A I said I didn't recall, and I don't.	4 you.
5 Q Okay.	5 A I'm there, yes.
6 (Thereupon, an off-the-record discussion	6 BY MR. ROSSMAN:
7 was held.)	7 Q Who at IBM directed you to be ready to
8 (Thereupon, marked for identification was	8 start taking phone calls precisely at the time your
9 Defendant's Exhibit D1.)	9 scheduled shift started?
10 BY MR. ROSSMAN:	10 A Our manager.
11 Q Now, ma'am, I've just handed you a	11 Q Which manager?
12 document that's been marked as Exhibit 1. It is the	12 A Kerry Bethea.
13 Declaration of Cathy S. Barday. Would you please take	13 Q When did Mr. Bethea say that to you?
14 a look at that declaration for me.	14 A He's -- he didn't say. He wrote it.
15 A Yes.	15 Q Where did he write it?
16 Q Now, is that your signature on the back	16 A In a Lotus Note.
17 of this document?	17 Q Do you remember when you received that
18 A Yes.	18 Lotus Note?
19 Q And had you reviewed this document before	19 A No, I don't recall the exact time.
20 you signed it?	20 Q Do you still have a copy of that Lotus
21 A No.	21 Note?
22 Q You had not reviewed the document before	22 A No.
23 you signed it?	23 Q Do you recall who received that Lotus
24 A You just handed it to me.	24 Note?
25 MR. ZOURAS: I think he means at the time	25 A All the employees.
Page 27	Page 29
1 you signed it.	1 Q And how do you know that all employees
2 BY MR. ROSSMAN:	2 received it?
3 Q The original of the document that you	3 A Because in the Lotus Note it tells you
4 signed, the original document, had you reviewed that	4 who it's sent to.
5 document before you signed it?	5 Q And that's all employees who reported to
6 A Oh, I'm sorry. I thought you meant did I	6 Mr. Bethea at that time?
7 just now.	7 A In the Teach area that he managed, yes.
8 MR. ZOURAS: Right.	8 Q What do you recall about that document?
9 BY MR. ROSSMAN:	9 A That it said that we needed to be
10 Q No. I – I assume that you hadn't signed	10 available at our assigned time, and to do that we
11 the copy that I just handed you, ma'am. I was asking	11 needed to do whatever it took to be on time and be
12 you whether or not you had signed the original of the	12 available. If that meant coming 15 to 30 minutes
13 document, whether you had reviewed the original before	13 before to get logged on, then we needed to do that;
14 you signed the original.	14 and that he was aware that some people could sign on
15 A (Reviews document) Yes.	15 faster, they were more adept, than others.
16 Q Now, ma'am, would you look at paragraph 8	16 Q So is it fair to say then that you showed
17 of Exhibit 1. There's a statement in there that IBM	17 up earlier than some of your co-workers?
18 directed us to be ready to start taking phone calls	18 A No.
19 precisely at the time our scheduled shift started.	19 Q No, you didn't?
20 A Where? I'm sorry.	20 A No, it's not fair to say that. That was
21 MR. ZOURAS: Paragraph what?	21 your question. Is it fair to say? No.
22 MR. ROSSMAN: Paragraph 8.	22 Q Is it true that some of your co-workers
23 THE WITNESS: Where?	23 arrived later than you did to work?
24 MR. ZOURAS: He said paragraph 8.	24 A Yes.
25 MR. ROSSMAN: It should be on the first	25 Q Some of the co-workers who had the same

<p>1 assigned hours as you arrived later than you?</p> <p>2 A Only if they were late.</p> <p>3 Q Now, you don't recall when you -- when</p> <p>4 you received this e-mail from Mr. Bethea?</p> <p>5 A I don't.</p> <p>6 Q Do you know why Mr. Bethea sent the</p> <p>7 e-mail?</p> <p>8 A I don't.</p> <p>9 Q What was the reaction? What was your</p> <p>10 reaction to the e-mail?</p> <p>11 A My reaction? I thought we needed to be</p> <p>12 available at our assigned time, but I thought it was</p> <p>13 unfair.</p> <p>14 Q Now, prior to receiving that e-mail, did</p> <p>15 you -- did you arrive at work closer to the start of</p> <p>16 your scheduled shift? I mean, did this e-mail cause</p> <p>17 you to start to come to work earlier?</p> <p>18 A No.</p> <p>19 Q And in order to be ready to take phone</p> <p>20 calls at the start of your scheduled shift, you need</p> <p>21 to be logged into the -- to the systems we discussed?</p> <p>22 A Yes.</p> <p>23 Q Was there anything else you needed to do?</p> <p>24 A Have a pencil and paper.</p> <p>25 Q Okay. Now, other than that e-mail, did</p>	<p>Page 30</p> <p>1 A Shari Brown currently I believe is still</p> <p>2 an employee of IBM in the same area that Charles works</p> <p>3 in to the best of my knowledge.</p> <p>4 Q And who is Lisa?</p> <p>5 A Lisa also still works in the area that</p> <p>6 Charles is in now, Entitlement.</p> <p>7 Q What's her last name?</p> <p>8 A I don't recall.</p> <p>9 Q Any other employees that you recall</p> <p>10 discussing the e-mail with?</p> <p>11 A Ron Porter, James Garnet, Lewis -- the</p> <p>12 last name -- I don't recall his last name. He came</p> <p>13 from the sales center.</p> <p>14 Q And these were all employees who at the</p> <p>15 time reported to the same supervisor you did?</p> <p>16 A To Mr. Bethea, that's correct.</p> <p>17 Q And were these separate conversations or</p> <p>18 you had conversations with -- with these employees all</p> <p>19 at once?</p> <p>20 A We ate lunch together.</p> <p>21 Q Okay. Well, what do you recall about the</p> <p>22 conversation or conversations you had about this</p> <p>23 e-mail?</p> <p>24 A That the tone was unhappy, that my</p> <p>25 co-workers thought it was unfair, that it caused</p>
<p>1 anyone -- was there any other occasion when someone at</p> <p>2 IBM directed you to be ready to start taking phone</p> <p>3 calls precisely at the time your scheduled shift</p> <p>4 started?</p> <p>5 A Was there someone else?</p> <p>6 Q Uh-huh (affirmative).</p> <p>7 A No.</p> <p>8 Q And did Mr. Bethea on any other occasions</p> <p>9 direct you to be ready to start taking phone calls</p> <p>10 precisely at the time of your scheduled shift?</p> <p>11 A Do you mean me personally or the team?</p> <p>12 Q You personally.</p> <p>13 A No.</p> <p>14 Q Did you discuss the e-mail with any of</p> <p>15 your co-workers?</p> <p>16 A Yes.</p> <p>17 Q Who did you discuss it with?</p> <p>18 A Charles, Sabrina, Shari, Lisa.</p> <p>19 Q Who's Charles?</p> <p>20 A Charles Seward who was here a short while</p> <p>21 ago.</p> <p>22 Q Who's Sabrina?</p> <p>23 A Sabrina Carstarphen, no longer with IBM,</p> <p>24 a previous employee.</p> <p>25 Q And who's Shari?</p>	<p>Page 31</p> <p>1 hardship because of child care and transportation</p> <p>2 issues, and that IBM was causing us to work and not</p> <p>3 get paid.</p> <p>4 Q Did you ever complain to anyone at IBM</p> <p>5 about -- I mean, other than the co-workers you just</p> <p>6 discussed. Did you ever complain to anyone at IBM</p> <p>7 about Mr. Bethea's e-mail?</p> <p>8 A Not about the e-mail, no.</p> <p>9 Q Did you ever complain about anything?</p> <p>10 A I did.</p> <p>11 Q What'd you complain about?</p> <p>12 A Not getting paid for hours worked.</p> <p>13 Q Who'd you complain to?</p> <p>14 A HR, human resources.</p> <p>15 Q And when was this?</p> <p>16 A In 2006, approximately.</p> <p>17 Q And at that point in time, had you</p> <p>18 already received the e-mail that you testified about?</p> <p>19 A Yes.</p> <p>20 Q Okay. Do you remember when in 2006 it</p> <p>21 was?</p> <p>22 A I don't.</p> <p>23 Q You don't remember the season, early or</p> <p>24 late in the year?</p> <p>25 A I don't, (shakes head negatively).</p>

	Page 34		Page 36		
1	Q	Do you remember who you complained to?			
2	A	I do.	1	Q	Okay. Did you submit the pad to HR?
3	Q	Who was that?	2	A	Yes.
4	A	It was HR partner.	3	Q	Now, how did – how did you actually come
5	Q	Do you remember the person's name?	4	into contact with HR?	
6	A	I don't, (shakes head negatively).	5	A	Well, I inquired to see if there was a
7	Q	Was it through -- how did you -- how did	6	policy where I could address my grievance, which was	
8	you	lodge the complaint? Was it through e-mail or	7	getting paid for the 44 hours, and I learned there was	
9	telephone	an open door and -- or that we could contact the HR			
10	call	partner directly. I didn't know who it was and had to			
11	or face to face? How was it?	10	find out who it was through a series of phone calls.		
12	A	(Shakes head negatively.) It wasn't	11	And this was all done via phone. I never met the	
13	related	12	person face to face because the person was in North		
14	to the	13	Carolina.		
15	Q	Right.	14	Q	Okay. So what was the result of your
16	A	And I think you're tying it to the memo.	15	complaint?	
17	It	16	A	(Shakes head negatively.) No result, no	
18	wasn't.	17	pay.		
19	Q	No. I – ma'am, I'm not tying it to	18	Q	Were you given any reason?
20	anything.	19	A	Yes. If you want to proceed against IBM,	
21	I just want to know how you voiced the	20	be aware there are consequences, probably the loss of		
22	complaint.	21	your job. You will not prevail.		
23	A	I wanted to clarify. Okay.	22	So I thought that over carefully, weighed	
24	I	I was assigned to work on a project and,	23	the pros and cons, and decided that I was in Rome and	
25	wasn't.	21	24	I couldn't quarrel with the Pope and win, I needed the	
	Q	by Mr. Bethea, worked in excess of 40 hours, closer to	25	job at the time. So I had more to lose than to gain,	
	A	44 hours on that project and – worked overtime and			
		asked to be paid for that overtime. His response was			
		"in your dreams."			
	Q	That was Mr. Bethea's response?			
	A	It was.			
			Page 35		
1	Q	Okay. So at that point after Mr. Bethea			
2	said	2	so I didn't go further.		
3	that	3	Q	Who – who were you saying told you there	
4	to	3	would be consequences?		
5	A	4	A	The HR partner.	
6	I	5	Q	Whose name you don't remember?	
7	thought	6	A	No. But it was a female, and she was	
8	about	7	based	7	based out of Cary-Raleigh, North Carolina, and then
9	it,	8	on	8	moved on to Durham she told me. Again, I never met
10	and	9	her.	9	her.
11	A	10	Q	How many times did you speak with her?	
12	approximately	11	A	She – approximately, this is	
13	a	12	approximately	12	approximately, ten to twelve times. She called me at
14	month	13	home	13	home, and I called her at home. She advised do not
15	later,	14	call	14	call her at work.
16	yes,	15	Q	She advised you not to call her at work?	
17	I	16	A	Yes. We're – and probably rightfully	
18	went	17	so.	17	We're not supposed to use our phones for -- that
19	to	18	would	18	would be considered personal business.
20	HR	19	Q	She – she advised you that you should	
21	partner.	20	not	20	not be making calls from work or that you should –
22	On	21	A	21	That I should call her from home when I
23	a	22	get	22	get home and she would call me at home but not -- she
24	pad,	23	work	23	would not call me at work and I should not contact her
25	uh-huh	24	at	24	at work.
	(affirmative).	25	Q	Okay. At what point did she – did she	
	On a pad.				
	On a pad.				
	Do you still have that pad?				
	No.				

<p>1 tell you in your words that there would be 2 consequences?</p> <p>3 A We were probably about the tenth, twelfth 4 call roughly.</p> <p>5 Q And how did that come up?</p> <p>6 A I asked her how I could get paid for the 7 44 hours.</p> <p>8 And she said, well, this is the first 9 chain. She said, but for us to take it further, we 10 have to contact the second line, we have to go more 11 public with it. But she said, be aware when that 12 happens – and the manager doesn't know when you go to 13 HR partner. HR will not let the manager know unless 14 you give approval. That's part of IBM's open-door 15 policy, give an employee the right to address 16 grievances confidentially, hopefully for a good 17 solution.</p> <p>18 But she told me that she would have to go 19 to him and there would be consequences and be aware of 20 that. She said, I want you to know the whole 21 situation.</p> <p>22 And I said, well, let me give it thought.</p> <p>23 She said, but I have to have your okay to 24 proceed.</p> <p>25 I said, all right, I'll think it over.</p>	<p>Page 38</p> <p>1 me work-related.</p> <p>2 Q Why did it take ten to twelve calls to 3 get the facts about the situation?</p> <p>4 A Well, I would get home late. We might 5 have a ten- or fifteen-minute call, she had to go 6 somewhere to a meeting, so the duration of our calls 7 was not an hour. Sometimes it would be ten to fifteen 8 minutes. That's why it took a lot of calls.</p> <p>9 Q Did you have calls with her after you say 10 she told you there would be consequences?</p> <p>11 A I did not, (shakes head negatively).</p> <p>12 Q Did you have calls with anyone else about 13 that matter?</p> <p>14 A I did not, (shakes head negatively).</p> <p>15 Q Did you ever discuss that matter with 16 anyone at work?</p> <p>17 A No.</p> <p>18 Q Did you ever lodge any other complaints 19 at IBM?</p> <p>20 A No.</p> <p>21 Q And I think you said you no longer have 22 the note pad on which you say that you wrote down the 23 hours that you worked during this project?</p> <p>24 A No.</p> <p>25 Q Do you have any other notes or documents</p>
<p>Page 39</p> <p>1 let me have some time to sleep on it, weigh it, and 2 I'll get back with you.</p> <p>3 Q Did she mention what the consequences 4 would be?</p> <p>5 A Loss of employment. She said, be aware 6 it could be loss of employment, yes.</p> <p>7 Q Did you pursue the matter any further?</p> <p>8 A I did not.</p> <p>9 Q What did – what do you recall from the 10 earlier calls with the HR partner?</p> <p>11 A What do you mean by earlier calls?</p> <p>12 Q Well, you said that the call in which, in 13 your words, she mentioned consequences occurred 14 several calls into your interaction with her.</p> <p>15 A That's right.</p> <p>16 Q What do you recall about the calls that 17 took place before the call?</p> <p>18 A Prior to that –</p> <p>19 Q Uh-huh (affirmative).</p> <p>20 A -- they were fact finding on her part.</p> <p>21 She would ask me questions.</p> <p>22 Q What types of questions did she ask?</p> <p>23 A What department I worked in, how long had 24 I been there, how were my reviews, did I have a good 25 employment record, just a lot of detail things about</p>	<p>Page 41</p> <p>1 related to --</p> <p>2 A (Shakes head negatively.)</p> <p>3 Q -- to either your calls with the HR 4 partner or related to the overtime you say you worked?</p> <p>5 A No. When I left, I left.</p> <p>6 Q And this took place in 2006?</p> <p>7 A Yes, it did.</p> <p>8 Q But you don't remember the time period in 9 2006?</p> <p>10 A I don't.</p> <p>11 Q But it was mid-2007 before you moved to 12 your current position; is that correct?</p> <p>13 A Correct.</p> <p>14 Q In your new position, have you worked 15 overtime?</p> <p>16 A Yes.</p> <p>17 Q Have you been paid for that overtime?</p> <p>18 A Yes.</p> <p>19 Q Have you ever had any problems getting 20 paid for all the hours you worked in your new 21 position?</p> <p>22 A No.</p> <p>23 MR. ROSSMAN: Can we take a quick break?</p> <p>24 MR. ZOURAS: Yeah.</p> <p>25 THE VIDEOGRAPHER: Off video.</p>

<p>1 (Thereupon, a recess was taken from 2 5:26 p.m. to 5:34 p.m.) 3 THE VIDEOGRAPHER: On video. 4 BY MR. ROSSMAN: 5 Q Ma'am, what did you do to prepare for 6 your deposition today? 7 A Rephrase that question, please. 8 Q Did you do anything to get ready to come 9 here to testify today? 10 A Well, I drank some water, I drank half a 11 cup of coffee but – and then I got my transportation 12 here. No. 13 Q Did you review any documents? 14 A No. 15 Q Did you speak with anyone? 16 A Yes. I told my boss that I was going. 17 Q So you didn't speak with anyone else to 18 prepare for your deposition today? 19 A No. 20 Q Now, at any point after the Avada [sic] 21 system came into place, are you aware of any time 22 where someone could be available for calls simply by 23 logging into the phone? 24 A You said after the Avaya system was – 25 Q Avaya.</p>	<p>Page 42</p> <p>1 what, around 2005 or so? 2 A Roughly, yes. 3 Q So let's say the first six months. How 4 often were there system problems? 5 A We were down probably three – three to 6 four months out of the six, more downtime than uptime, 7 much, much more. And IT lived in our department. 8 Q How about after that first six months, 9 say the next six months? 10 A The next six months, about 50/50. And 11 thereafter it started smoothing out better. 12 Q Okay. So the latter part of 2006, 2007? 13 A Was much improved over the initial 14 startup. 15 Q Were there still instances where you had 16 system problems? 17 A Oh, yes. Oh, yes. And – and downtime 18 and – yes. It would just crash. 19 Q Okay. And then you also mentioned 20 password problems. 21 A Yes. 22 Q What were the – what types of problems 23 were those? 24 A Well, each application required a 25 different password, so you didn't have warning on each</p>
<p>1 A – in place? 2 Q I'm sorry. Yes. 3 A Yes. If the Avaya was not available, we 4 had to go back and log on the phone and take calls 5 manually or if your computer would not boot up or you 6 had let your password expire or the password had 7 expired and you weren't aware of it. So password 8 issues or system problems, (nods head affirmatively). 9 Q Setting aside system problems or password 10 problems – 11 A Uh-huh (affirmative). 12 Q – were there any times when you 13 personally would make yourself available for calls 14 simply by logging into the phone after Avaya came in? 15 A No. 16 Q Are you aware of any instance in which 17 your co-workers would make themselves available – 18 A No. 19 Q – simply by logging into the phone? 20 A No. 21 Q Now, how often did these system problems 22 occur? 23 A At what point in time are you speaking 24 of? Initially -- 25 Q Well – okay. When Avaya first came in,</p>	<p>Page 43</p> <p>Page 45</p> <p>1 application that your password was going to expire. 2 You would try to log on: Your password has expired. 3 Q Have you ever had any – any problems 4 with Kimberly Ramirez as manager? 5 A No. 6 Q Is she a good manager? 7 A Good is relative. 8 Q Do you think she's a good manager? 9 A Fair manager. 10 Q Fair manager? 11 A Fair in the sense of just. 12 Q What about Kerry Bethea, would you 13 describe him as just? 14 A Dishonest. 15 Q Is it fair to say you dislike Mr. Bethea? 16 A No. 17 Q You don't dislike him? 18 A No. 19 Q Did you believe that he was dishonest 20 prior to the incident with the 44 hours of overtime 21 that you mentioned earlier? 22 A Yes. 23 Q Why? 24 A I was his team lead, and part of that 25 duty was to render monthly reports of employees'</p>

<p>1 sign-on and sign-out time. 2 (At this time, Mr. Matthew W. Ray joined 3 the deposition proceedings.) 4 A The numbers – should – am I all right 5 to keep talking? 6 BY MR. ROSSMAN: 7 Q Yeah. 8 A And that report rendered measurements of 9 our service call volume. 10 Q Uh-huh (affirmative). 11 A Those measurements affected our standing 12 as a call center. We were rated excellent, 13 satisfactory, meeting call measurement requirements, 14 not meeting call measurement requirements. There were 15 different times that the reports reflected that we 16 were not meeting the requirements. He altered the 17 figures. 18 Q How did he do that? 19 A He told me to change the numbers on the 20 report. I told him that he was cooking the books. I 21 said, what you're doing is dishonest and you're going 22 to IBM jail. 23 He said, no, I'm not, you just don't 24 understand it. He said, just give it to me. 25 Q So did you, yourself, change these</p>	Page 46	<p>1 Q And what exactly was being measured? The 2 sign-in and sign-out to what? 3 A The sign-in, the sign-out, which 4 reflected how fast we answered a call, whether calls 5 were dropped, whether an employee was staying in AUX. 6 There were AUX codes for break, bathroom, sign-on, 7 sign-out, if you were working on a project, if you 8 went into other, which means that you could be on a 9 call and then you needed to go ask someone something 10 because that call was a little bit more complex, well, 11 you go into other, but you were supposed to get right 12 back and complete that call as fast as possible. 13 Q So what was the cause of the difference 14 between the manual reports and the system-generated 15 reports? 16 A Human input. 17 Q So on the manual reports the individual 18 employees would be reporting – 19 A The individual employees would put the 20 actual time that they arrived and signed on the 21 system. It wasn't supposed to look like that. Kerry 22 wanted the report to reflect your assigned work hours. 23 Putting the assigned work hours would make the 24 measurements come out favorably. If you put in early 25 start time, that caused a variance. That means you</p>
<p>1 reports? 2 A No. 3 Q What were the reports called; do you 4 remember? 5 A Yes. They were called the DOR. 6 Q And how were these DOR reports when you 7 would – you would generate these DOR reports in the 8 first instance, I guess? 9 A No. They – they're two part. I would 10 go and look at each person's sign-in and sign-out 11 records prepared by them. Those were sent to the 12 manager and copied to me. If an employee failed to 13 copy to me, he would forward to me. And I would look 14 at the daily sign-in/sign-out and compare to a 15 system-generated report that was prepared by Jane 16 Jessup. And she was part of the IT department. 17 Q What was the -- the system report? What 18 was that? 19 A It was called the DOR report also. 20 Q Oh, the system was the DOR report? 21 A The system was the DOR report. There was 22 a manual version, and there was a system version. You 23 had to reconcile both of them to satisfactorily 24 reflect that our call center or our service center, 25 Teach, met the measurements, the quality measurements.</p>	Page 47	<p>1 expended more time than you could justify for the call 2 input. 3 Q So more time – the same amount of calls 4 over a longer period of time is what you're saying? 5 A (Nods head affirmatively.) Which 6 affected the quality measurement. 7 Q How did the employee-generated reports -- 8 was there a system for that or -- or was this paper? 9 I mean, what was it? 10 A It was -- it was like an Excel 11 spreadsheet. 12 Q Uh-huh (affirmative). 13 A And -- and then some people didn't want 14 to do that. They just put it on the tablet and put 15 their times. 16 Q And what exactly were people reporting on 17 these sheets? 18 A What time they signed on. And it was on 19 a day-by-day basis. What time you sign on, what time 20 you took for your first break. And your break times 21 were assigned. Your lunches were assigned. What time 22 you went to lunch, what time you returned, any 23 bathroom breaks that you took, and when you signed 24 off. 25 Q And why were these reports being</p>

<p style="text-align: right;">Page 50</p> <p>1 generated; do you know? The manual reports I mean. 2 A Why -- why were the DOR reports started? 3 Q The -- the manual DOR reports. 4 A The manual DOR reports were started 5 because the system-generated DOR reports were 6 reflecting measurements, and the measurements appeared 7 to be favorable. It was decided to see if that was 8 actual. Someone must have questioned. I don't know 9 who, but someone must have questioned because a memo 10 went out from our manager, Kerry Bethea, Lotus Notes 11 memo, that we needed to start signing on the system on 12 an Excel spreadsheet or we could do it on paper to 13 start with and submit it monthly to him and to the 14 team lead showing the actual daily sign-on/sign-out 15 times. And the reason given was for quality 16 monitoring and to be able to measure to the system- 17 generated reports measuring accuracy, measuring 18 timeliness. The two should agree.</p> <p>19 Q And this -- so this was a memo from 20 Mr. Bethea?</p> <p>21 A It was. But it wasn't a memo that he 22 thought of. It came -- per him it came from higher 23 up.</p> <p>24 Q How do you know it came from higher up?</p> <p>25 A He said it did. I asked him why we were</p>	<p style="text-align: right;">Page 52</p> <p>1 were submitting a daily DOR up until when? 2 A Up until about six months before we got 3 outsourced. 4 Q Okay. So about six months before you 5 moved to your new -- new position? 6 A No. Before we got outsourced. 7 Q When were you outsourced? 8 A We were outsourced in October of two 9 thousand and -- I want to say 2007. I -- I -- I may 10 have the year wrong, but it was in October. We were 11 told -- we were -- we called in on a Friday and told 12 we had been outsourced and that we needed to stay 13 until January, if needed, to complete and help out the 14 call center in the Philippines. If they had problems, 15 they could call us, and we would help them get through 16 their calls. Not all of us would stay but on a 17 need-be basis.</p> <p>18 Q Was that October 2006 when you were 19 outsourced?</p> <p>20 A It was October I want to say 2006, (nods 21 head affirmatively).</p> <p>22 Q Because I think you said you started 23 your -- your --</p> <p>24 A In two --</p> <p>25 Q -- analyst position --</p>
<p style="text-align: right;">Page 51</p> <p>1 starting to do this because it was a lot of extra work 2 on me to do. And he said because it was required by 3 the quality management and the internal auditors 4 wanted it.</p> <p>5 Q When was this?</p> <p>6 A That was around the early part of 2005, 7 perhaps the latter part of 2004, but I don't remember 8 the exact times. But we did those reports for at 9 least a year.</p> <p>10 Q Do you remember when you ended the 11 reports?</p> <p>12 A The DOR? The DOR ended --</p> <p>13 Q The manual DOR, right.</p> <p>14 A Oh, the manual DOR?</p> <p>15 Q Yeah.</p> <p>16 A Oh, we kept the manual DOR right up to 17 about six months before we got outsourced.</p> <p>18 Q So you were still doing the manual DOR up 19 until 2006?</p> <p>20 A Submitted manual DOR. Well, I wasn't. 21 There were -- there was a change. I wasn't team lead. 22 I became a senior teleservices representative, but the 23 team lead who followed also did it. Because I had to 24 then submit my daily DOR.</p> <p>25 Q Well, that's what I'm saying. So you</p>	<p style="text-align: right;">Page 53</p> <p>1 A In two thousand and --</p> <p>2 Q And seven?</p> <p>3 A Exactly.</p> <p>4 Q Okay. So six months before the 5 outsourcing, so that would have been, what, April, 6 March, April?</p> <p>7 A About that time.</p> <p>8 Q Of 2006?</p> <p>9 A About that time frame, yes.</p> <p>10 Q Okay. And do you know how long the 11 system-generated DORs were created?</p> <p>12 A I don't know when they started. I know 13 they were in existence at the time that we started and 14 they continued thereafter. And Jane Jessup or Cathy 15 Whelan would know. Jane Jessup -- I don't know if 16 she's still with IBM -- would know because she was the 17 person that was the guru of those reports.</p> <p>18 Q Now, I may have asked you this, but when 19 did you start being the -- the team lead for Kerry?</p> <p>20 A I became team lead for -- you didn't ask 21 me that. I became team lead approximately 2004, 2005, 22 that time frame.</p> <p>23 Q And when did you stop being team lead?</p> <p>24 A I was team lead approximately a year, 25 (nods head affirmatively).</p>

	Page 54		Page 55
1 Q	So 2005, 2006?	1 it at my desk and ready to plug in if somebody needed	
2 A	(Nods head affirmatively.)	2 help.	
3 Q	Why did you stop being a team lead?	3 Q	So when you were team lead, how much
4 A	Because Teach was restructured per Kerry.	4 before the start of your shift would you show up?	
5 He was restructuring Teach, and he needed a different		5 A	The same time, 6:30.
6 type person for that. And he thought that with my		6 Q	Why?
7 experience I would better serve the department as a		7 A	Because I had reports I had to render,
8 senior teleservices representative doing more		8 and I had to be there before the first employee	
9 specialized work such as working queues and what have		9 arrived to make sure that they were signed on and that	
10 you.		10 we had the calls in the queue handled. We had calls	
11 Q	As a team lead, how did your duties	11 in the queue before – we'd have – we might have 30,	
12 differ from the teleservices reps in your department?		12 40, 50 calls in the queue, and I had to make sure	
13 A	I only logged on the phone when there was	13 somebody was there at 7:00 when those calls started to	
14 an overflow of calls. When I was a teleservices		14 handle those calls. If they didn't show up, then I	
15 representative, I was logged on all day long. And		15 would have to sign on and take those calls.	
16 then I did administrative reports such as the DOR,		16 Q	So was your shift then 6:30 to whenever?
17 filled in when Kerry was away, ran the department when		17 A	To whenever, yes, 8:30, 9:00 o'clock,
18 he was away. And he was out – he had illness and –		18 yes.	
19 and was out very frequently.		19 MR. ROSSMAN: Can we stop for a second?	
20 Q	So as a team lead then you didn't log	20 THE VIDEOGRAPHER: Off video.	
21 onto the system every day?		21 (Thereupon, an off-the-record discussion	
22 A	I didn't have to, no.	22 was held.)	
23 Q	Okay. So when you were a team lead, can	23 THE VIDEOGRAPHER: On video.	
24 you describe for me how your day would begin?		24 BY MR. ROSSMAN:	
25 A	I would come in the same time. Didn't	25 Q	So did you –
	Page 55		Page 57
1 change my hours. My hours were the same. And then –		1 A	Are we back?
2 Q	Your scheduled hours?	2 Q	We're back. Okay. You ready?
3 A	My scheduled hours.	3 A	(Nods head affirmatively.)
4	And then I had to observe, make sure	4 Q	All right. So when you were a team lead,
5 folks were going to be staffed. I had to do reports		5 Mr. Bethea's team lead, did you work any unpaid	
6 on anybody that was absent and submit those. Those		6 overtime?	
7 had to be submitted to Kerry and to the fish bowl, the		7 A	Yes.
8 quality control, because that – they had to adjust		8 Q	When?
9 our call volumes to account for bodies that were not		9 A	Every week.
10 there. I had to work on any customer sat issues,		10 Q	How?
11 start the paperwork on those, and then work on any		11 A	After he left, I had to stay there until
12 sales reports. We were going to do campaign		12 the last employee got off the phone.	
13 call-outs. I had to get that ready on the Excel		13 Q	Uh-huh (affirmative). So how much unpaid
14 spreadsheet, get it ready to send out, pick out the		14 overtime did you work?	
15 calls, those type functions. And any problems that		15 A	In the course of – let's see. Every day
16 rose up, any customer sat issues. If a customer		16 at least an hour in the evening, not counting the	
17 called on the phone and complained, I had to handle		17 mornings. In the evening, at least an hour or more.	
18 that. I had to put on my headset, go over there, plug		18 Q	So at least, you're saying, five hours a
19 into their phone, find out the details, and try to		19 week?	
20 resolve that.		20 A	For the evening only, not counting the
21 Q	Okay. So when you were – there was no	21 morning, my extra hours in the morning, my extra time.	
22 requirement that you be call ready, I guess, at the		22 Q	So you worked extra hours, you're saying,
23 beginning of your shift when you were a team lead?		23 as a team lead in the morning and the evening?	
24 A	Not when I was a team lead, no. But I	24 A	(Nods head affirmatively.) Sometimes
25 had to have my headphone ready to plug in, had to have		25 more if we had a call -- for example, we had a call	

<p style="text-align: right;">Page 58</p> <p>1 that was not our call. It was a man that wanted -- he 2 was writing a master's thesis on the RISC 6000, and he 3 wanted information, and he had been transferred round 4 about the company, and he wanted an answer now. He 5 wanted help. I stayed on that call till 9:30.</p> <p>6 Q So as a team lead, how much unpaid 7 overtime will you average in a week?</p> <p>8 A Anywhere from, I'd say, eight to fifteen 9 hours on an average.</p> <p>10 Q Eight to fifteen a week?</p> <p>11 A Average.</p> <p>12 Q Okay. Did you ever complain to anyone 13 about that overtime?</p> <p>14 A No.</p> <p>15 Q Why not?</p> <p>16 A (Shakes head negatively.) Where would I 17 go with it?</p> <p>18 Q Well, I mean, you said you complained 19 about the 44 hours on special projects.</p> <p>20 A That's right. And I -- I --</p> <p>21 Q And you were a team lead before you did 22 the special project; right?</p> <p>23 A I was. But I was -- I also -- to be the 24 team lead, I was told that it would involve more 25 duties. I received a raise to be a team lead, and I</p>	<p style="text-align: right;">Page 60</p> <p>1 you say you didn't get paid for your overtime?</p> <p>2 A His reaction and the amount of work I had 3 done. I -- I felt justly that I should be paid for 4 the work that I had done, and then the work I had done 5 was used by IBM for a sales campaign. It was -- the 6 sales center used it, and they received commission on 7 the calls that they made, so they were compensated for 8 the work that I had done.</p> <p>9 Q How many weeks was that project?</p> <p>10 A How many weeks did I work on that?</p> <p>11 Q The project where you say you incurred 12 the 44 hours.</p> <p>13 A It was three months.</p> <p>14 Q Three months. So you incurred 44 hours 15 of overtime over three months.</p> <p>16 But you're saying that as a team lead you 17 would incur eight to fifteen hours a week?</p> <p>18 A Because I had to stay until the last 19 person left and satisfied the call. That could be 20 7:00 or 8:00 at night, depending on their schedule.</p> <p>21 Q But you complained, you say, for the 22 first time after incurring 44 hours over three 23 months --</p> <p>24 A I did.</p> <p>25 Q -- whereas before you say you had been</p>
<p style="text-align: right;">Page 59</p> <p>1 got a band -- higher band adjustment.</p> <p>2 Q Were you salaried at that time?</p> <p>3 A I was.</p> <p>4 Q Were you considered exempt at that time?</p> <p>5 A I was.</p> <p>6 Q So you weren't overtime eligible when you 7 were a team lead?</p> <p>8 A Yes, I was.</p> <p>9 Q So you were -- what band were you?</p> <p>10 A I was a band 3, and then I went to a 11 band 4.</p> <p>12 Q Okay.</p> <p>13 A I was not -- the band 6 is where it -- 14 I -- I never made a band 6 (indicating).</p> <p>15 Q When you became a senior rep, did you 16 receive a reduction in pay?</p> <p>17 A No.</p> <p>18 Q Were you demoted in band?</p> <p>19 A No. There was a talk of that, though.</p> <p>20 Q Did -- when you complained about the 44 21 hours, was that -- that was when you were a senior 22 rep; right?</p> <p>23 A Right. Yes.</p> <p>24 Q What was it about that occasion that led 25 you to complain as opposed to the prior occasions when</p>	<p style="text-align: right;">Page 61</p> <p>1 incurring eight to fifteen a week, but you never 2 complained about that.</p> <p>3 A But I received a raise and I received a 4 band increase.</p> <p>5 Q But your band stayed the same.</p> <p>6 A And I also received an award at the end 7 of that year, a financial award. I was cited for an 8 award and received a monetary award, so I was 9 compensated.</p> <p>10 I didn't receive anything when I was 11 doing that research project, (shakes head negatively), 12 nothing.</p> <p>13 Q But your band had stayed the same, right, 14 and your pay had stayed the same?</p> <p>15 A When I was doing the research project, my 16 band was a band 3.</p> <p>17 Q I thought you said -- I thought it was a 18 band -- you were a band 4 I thought you said.</p> <p>19 A I was -- when I did my research project 20 or when I was a team lead?</p> <p>21 Q When you were a team lead, I thought you 22 were a four.</p> <p>23 A I was a three when I started. I became a 24 four.</p> <p>25 Q And then were you demoted to a three</p>